

S.B.Civil Writ Petition No.5595/2004

Mani Ram

vs

State of Rajasthan & Ors.

DATE OF ORDER : - 13.12.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. H.S. Sidhu, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order passed by the Executive Engineer dated 17.8.2004 (Annex.P/3), and which was approved by the Superintending Engineer vide communication dated 21st August, 2004 (Annex.P/4).

According to learned counsel for the petitioner before taking a decision, no notice was given to the cultivators, who may be effected and the petitioner is one of them. According to learned counsel for the petitioner because of the decision taken by the Executive officer for making alteration in the irrigation facility, the petitioner will be adversely effected, but now the petitioner cannot challenge the order of the Executive Officer by filing appeal because of the reason that the appeal lies to the Superintending Engineer, who has already approved

the report of the Executive Officer dated 17.8.2004.

I considered the submissions of learned counsel for the petitioner. The approval granted by the Superintending Engineer was granted in administrative capacity and not as an appellate authority. The approval of the Superintending Engineer is not decision on any objection of the petitioner. The Superintending Engineer under the Act discharges two functions, one administrative and another hearing the appeals under the Act. Therefore, the petitioner can challenge the order of the Executive Officer by filing appeal, which lies according to the petitioner under rule 11(3) of the Rajasthan Irrigation and Drainage Rules.

The petitioner may prefer appeal and on filing the appeal, the Superintending officer shall consider the appeal of the petitioner uninfluenced by the approval granted by the Superintending Engineer on 21st August, 2004.

In view of the above, I do not find any merit in the writ petition. Therefore, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-